

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Federal-State Joint Board on Jurisdictional Separations)	CC Docket No.
80-286		
Seeks Comment on Communications Assistance for Law)	ET Docket No. 04-295
Enforcement Act (CALEA) Issues)	

To the Commission:

Comments of SEI Communications, Inc., Southeastern Indiana Rural Telephone
Cooperative, Inc., Perry-Spencer Rural Telephone Cooperative, Inc. d.b.a. PSC
and Perry-Spencer Communications, Inc.

SEI Communications, Inc. and Southeastern Indiana Rural Telephone Cooperative, Inc. (hereinafter collectively referred to as “SEI”) along with Perry-Spencer Rural Telephone Cooperative, Inc. d.b.a. PSC and Perry-Spencer Communications, Inc. (hereinafter collectively referred to as “PSC”) submit these comments in response to the Federal Communications Commission’s (“FCC”) Public Notice requesting comment on jurisdictional separations issues related to the Communications Assistance for Law Enforcement Act (“CALEA”).¹

I. INTRODUCTION

¹ *Public Notice*, Federal-State Joint Board on Jurisdictional Separations Seeks Comment on Communications Assistance for Law Enforcement Act (CALEA) Issues, DA 05-535 (rel. March 2, 2005) (“Public Notice”).

SEI is a small local exchange carrier that provides local and long distance telephone service as well as Internet access service to customers who reside in the community surrounding Dillsboro, Indiana. PSC is also a small local exchange carrier that provides local and long distance telephone service and Internet access service to customers who reside in Dubois, Perry, Warrick, Pike, Crawford and Spencer counties, Indiana. SEI and PSC urge the Joint Board to adopt rules in this proceeding that allow small carriers to recover the full cost of upgrading their facilities to comply with CALEA without imposing the burden on their customers or relying solely on a per-intercept fee charged to law enforcement agencies (“LEAs”).

II. THE JOINT BOARD SHOULD ADOPT RULES THAT ALLOW FOR FEDERAL RECOVERY OF ALL CALEA-RELATED SOFTWARE AND HARDWARE UPGRADES

SEI and PSC encourage the Joint Board to adopt rules stating that the full cost of any hardware and software needed to comply with CALEA’s capability and capacity requirements should be considered “related to CALEA compliance.”² The Joint Board should not require carriers to parcel out what percentage of such hardware or software is needed specifically for CALEA as opposed to providing general upgrades. Often, there is no clear division between these needs because equipment vendors have included additional capabilities in the CALEA upgrades, leaving carriers with no option but to purchase the entire upgrade, even though they had no need or intention of upgrading their facilities at the time. PSC, for instance, must purchase a new switch to comply with CALEA’s J-STD-025 and

² See *Public Notice* at p. 2.

punch list capability requirements because its current switch has been manufacturer discontinued. This is despite the fact that PSC's current switch meets all of PSC's customers' needs and PSC has never received an intercept request. PSC should not be forced to undergo this significant expense without any ability to receive reimbursement. Nor should PSC be required to determine what percentage of this new switch is necessary to comply with CALEA. Such a determination is impractical and infeasible.

SEI also has not received any intercept requests. Nevertheless, SEI has expended approximately \$20,000 to upgrade its facilities to comply with CALEA's J-STD-025 and punch list capability requirements and will almost certainly incur additional costs to comply with CALEA's packet-mode requirements.³

Due to the fact that neither SEI nor PSC has ever received an intercept request, they cannot expect to rely on LEAs' surveillance needs to compensate them for the cost of their CALEA upgrades. Likewise, SEI and PSC's lack of any intercept history means they can only speculate on who the potential users of CALEA-related services might be. SEI speculates that the users will be local LEAs while PSC expects that any LEA, including even foreign intelligence services in rare instances, could request PSC's CALEA-related services.

³ SEI and PSC are both awaiting the Commission's final determination of what services are subject to CALEA's packet-mode requirements. *See In re* Notice of Proposed Rulemaking and Declaratory Ruling, ET Docket No. 04-295, RM-10865, (rel. Aug. 9, 2004); and *Public Notice*, Comment Sought on CALEA Petition for Rulemaking, RM-10865, DA No. 04-700 (rel. Mar. 12, 2004) ("Packet-Mode NPRM").

As stated in the Comments filed by The Rural Telecommunications Providers in response to the Packet-Mode NPRM, “the cost for CALEA compliance is not proportional to the size of the carrier, and the upgrade to a small rural carrier’s central office switch costs the same as an upgrade to a larger carrier with a larger customer base.”⁴ Accordingly, placing the burden of paying for CALEA upgrades on SEI’s and PSC’s small customer-base would be inequitable.

SEI and PSC recommend that circuit-based capabilities be treated separately from packet-mode. This is based on carriers’ need to receive reimbursement for upgrades they have already completed instead of waiting for the Commission to issue final rules defining what packet-mode services are subject to CALEA.⁵ Furthermore, SEI and PSC recommend that both circuit-mode and packet-mode capabilities be assigned to the Federal jurisdiction. This is only reasonable based on the fact that CALEA is a Federal mandate and packet-mode communications, at least as they relate to Internet access service, cross state boundaries and, consequently, should fall within Federal jurisdiction for purposes of the instant proceeding.

Under the current cost allocation rules, in some instances, carriers may be able to allocate CALEA costs to the interstate designation for central office switching equipment, allowing for recovery of costs through normal cost separation

⁴ Comments of Rural Telecommunications Providers, ET Docket 04-295, RM-10865, Nov. 8, 2004, at p. 8.

⁵ See Packet-Mode NPRM.

procedures at the federal level.⁶ However, these interstate amounts must be depreciated over the life of the central office plant, which averages fifteen years, and does not provide a mechanism for carriers to recover the intrastate portion of CALEA costs. Therefore, to ensure carriers' ability to recover the full costs of CALEA, SEI and PSC urge the Joint Board to allocate CALEA entirely under the Federal category.

⁶ *See* 47 C.F.R. § 36.125.

III. CONCLUSION

Based on the foregoing, SEI and PSC urge the Joint Board to designate the full cost of any hardware and software necessary for a carrier to comply with CALEA eligible for reimbursement; to allocate CALEA circuit-mode costs separately from packet-mode costs; and to allocate all CALEA costs under Federal jurisdiction.

Respectfully submitted,

PSC

**SEI Communications, Inc.,
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March 31, 2005